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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

PIOTR JASZCZYSZYN, Individually and on
 Behalf of All Others Similarly Situated,

Plaintiff,

v.

SUNPOWER CORPORATION, et al.,

Defendants.

Case No. 4:22-cv-00956-HSG

**DEFENDANTS' REQUEST FOR
 JUDICIAL NOTICE AND
 INCORPORATION BY
 REFERENCE IN SUPPORT OF
 DEFENDANTS' MOTION TO
 DISMISS THE AMENDED CLASS
 ACTION COMPLAINT**

Hearing Date: June 22, 2023
 Hearing Time: 2:00 p.m.
 Dept.: Courtroom 2, 4th Floor
 Judge: Hon. Haywood S. Gilliam, Jr.

INTRODUCTION

Pursuant to Federal Rule of Evidence 201 and Federal Rule of Civil Procedure 12(b)(6), and in support of their concurrently filed Motion to Dismiss Plaintiff's Amended Class Action Complaint for Violations of the Federal Securities Laws, ECF No. 55 (the "Complaint"), Defendants SunPower Corporation ("SunPower"), Peter Faricy, and Manavendra S. Sial (together with SunPower, the "Defendants") respectfully request that the Court take judicial notice of and incorporate by reference the following documents referenced by Plaintiff in the Complaint and attached as Exhibits 1 through 10 (the "Exhibits") to the Declaration of John C. Roberts:

Ex. #	Date	Description	Reference(s) in Complaint
SECURITIES AND EXCHANGE COMMISSION ("SEC") FILINGS			
1	2021-08-03	SunPower, Press Release, Q2 2021 Results, Exhibit 99.1 to Form 8-K	¶¶9, 39, 40
7	2021-11-03	SunPower, Press Release, Q3 2021 Results, Exhibit 99.1 to Form 8-K	¶¶57, 58, 59
8	2021-02-22	SunPower SEC Filing, Form 10-K (FY 2020)	¶¶45, 46, 64
9	2021-08-04	SunPower SEC Filing, Form 10-Q Q2 2021	¶¶11, 44, 45, 46
10	2021-11-04	SunPower SEC Filing, Form 10-Q Q3 2021	¶¶14, 62, 63, 64, 68
OTHER DOCUMENTS REFERENCED IN THE COMPLAINT			
2	2021-08-03	SunPower, Earnings Call, Q2 2021 Results	¶¶10, 40, 41, 43
3	2021-10-05	SunPower, M&A Call	¶¶12, 52
4	2021-11-03	SunPower, Earnings Call, Q3 2021 Results	¶¶13, 59, 61, 68
5	2021-08-03	SunPower, Investor Presentation, Q2 2021 Results	¶42
6	2021-11-03	SunPower, Investor Presentation, Q3 2021 Results	¶60

ARGUMENT

When resolving a motion to dismiss, the Court may consider documents if "the plaintiff refers extensively" to them or if they "form[] the basis of the plaintiff's claim." *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1002 (9th Cir. 2018) (citation omitted). Documents incorporated by reference are treated "as though they are part of the complaint itself." *Id.* The Court may consider the full text of incorporated documents on a motion to dismiss "including portions which

1 were not mentioned in the complaint[.]” *In re Stac Elecs. Sec. Litig.*, 89 F.3d 1399, 1405 n.4 (9th
 2 Cir. 1996); *see Northstar Fin. Advisors, Inc. v. Schwab Invs.*, 779 F.3d 1036, 1043 (9th Cir. 2015)
 3 (considering “entire content” of various SEC filings incorporated by reference).

4 Courts in the Northern District, including this Court, regularly judicially notice and
 5 incorporate by reference documents such as the ones referenced here: SEC filings, investor
 6 presentations, earnings call transcripts, and press releases. *In re Nektar Therapeutics*, No. 18-cv-
 7 06607-HSG, 2020 WL 3962004, at *7-8 (N.D. Cal. July 13, 2020) (Gilliam, J.) (incorporating by
 8 reference investor presentation transcripts and slide decks); *Iron Workers Local 580 Joint Funds*
 9 *v. NVIDIA Corp.*, 522 F. Supp. 3d 660, 670-71 (N.D. Cal. 2021) (Gilliam, J.) (taking judicial notice
 10 of company presentations and earnings calls); *Golub v. Gigamon Inc.*, No. 17-cv-06653-WHO,
 11 2019 WL 4168948, at *5-6 (N.D. Cal. Sept. 3, 2019) (considering documents incorporated by
 12 reference and taking judicial notice of company’s SEC filings, press releases, and earnings call
 13 transcripts), *aff’d*, 994 F.3d 1102 (9th Cir. 2021).

14 SEC FILINGS

15 Materials filed with the SEC and otherwise publicly available materials are subject to
 16 judicial notice and incorporation by reference. *Northstar*, 779 F.3d at 1043 (considering “entire
 17 content” of various SEC filings incorporated by reference); *Metzler Inv. GMBH v. Corinthian*
 18 *Colls., Inc.*, 540 F.3d 1049, 1064 n.7 (9th Cir. 2008) (finding SEC filings subject to judicial notice
 19 on a motion to dismiss); *Dreiling v. Am. Express Co.*, 458 F.3d 942, 946 n.2 (9th Cir. 2006) (same);
 20 *Weller v. Scout Analytics, Inc.*, 230 F. Supp. 3d 1085, 1094 n.5 (N.D. Cal. 2017) (granting request
 21 for judicial notice of SEC filings because “[i]n a securities fraud case such as this one, judicial
 22 notice of such documents is generally appropriate”). This is particularly true where, as here,
 23 Defendants seek consideration of the full text of the documents that contain the allegedly false and
 24 misleading statements. *See Orexigen*, 899 F.3d at 1006 (deeming incorporated a document that
 25 incorporated allegedly “‘materially misleading’ statements”); *In re Ocera Therapeutics, Inc. Sec.*
 26 *Litig.*, No. 17-cv-06687-RS, 2018 WL 7019481, at *5-6 (N.D. Cal. Oct. 16, 2018) (deeming
 27 incorporated “the sources of the allegedly fraudulent statements”), *aff’d*, 806 F. App’x 603 (9th
 28 Cir. 2020). Indeed, contextual analysis is a bedrock principle of federal securities laws. *See In re*

1 *Worlds of Wonder Sec. Litig.*, 35 F.3d 1407, 1414 (9th Cir. 1994) (noting basic proposition that
 2 “statements must be analyzed in context” (citation omitted)). Accordingly, Defendants
 3 respectfully request the Court take judicial notice of and incorporate by reference Exhibits Nos. 1,
 4 7-10.

5 **OTHER DOCUMENTS REFERENCED IN THE COMPLAINT**

6 Exhibits Nos. 2-6 are public documents the Complaint refers to extensively and/or uses as
 7 the foundation of Plaintiff’s securities claims. These documents are properly considered on a
 8 motion to dismiss as though they are part of the Complaint because they are central to the claims
 9 in the Complaint. *Orexigen*, 899 F.3d at 1003-07 (district court properly considered blog posts,
 10 internet and other articles, agency report and registration statement as incorporated by reference);
 11 *In re SunPower Corp. Sec. Litig.*, No. 16-04710-RS, 2018 WL 4904904, at *3 n.2 (N.D. Cal. Oct.
 12 9, 2018) (documents referenced in the complaint “explicitly as the ground for [defendant’s] false
 13 statements and scienter . . . are appropriately incorporated by reference”); *Von Saher v. Norton*
 14 *Simon Museum of Art at Pasadena*, 592 F.3d 954, 960 (9th Cir. 2009) (taking judicial notice of
 15 documents regarding the subject of the litigation because they “indicate[d] what was in the public
 16 realm at the time” (citation omitted)), *overruled on other grounds by Galbraith v. Cnty. of Santa*
 17 *Clara*, 307 F.3d 1119, 1125-26 (9th Cir. 2002). As such, Defendants ask the Court to take judicial
 18 notice of and incorporate by reference Exhibits Nos. 2-6.

19 **CONCLUSION**

20 For the foregoing reasons, Defendants respectfully request that the Court take judicial
 21 notice of and consider the Exhibits attached to the Declaration of John C. Roberts, as needed, in
 22 connection with Defendants’ concurrently filed Motion to Dismiss the Amended Class Action
 23 Complaint.
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1 Dated: February 24, 2023

Respectfully submitted,

2 **WILSON SONSINI GOODRICH & ROSATI**
Professional Corporation

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4 By: /s/ Katherine L. Henderson
Katherine L. Henderson

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6 Attorneys for SunPower Corporation, Peter Faricy,
and Manavendra S. Sial